

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

GREGG A. GARNER,)
Plaintiff,)
v.) NO. 3:06-1056
NISSAN NORTH AMERICA, INC. and) Judge Trauger/Bryant
DAN GAUDETTE,)
Defendants.)

TO: The Honorable Aleta A. Trauger

REPORT AND RECOMMENDATION

This case has been referred to the undersigned Magistrate Judge for report and recommendation on dispositive motions. (Docket Entry No. 2).

Plaintiff, initially pro se, filed his complaint seeking recovery under the Americans With Disabilities Act. (Docket Entry No. 1). Defendants have denied liability and have raised certain affirmative defenses. (Docket Entry No. 4). Defendants have filed their Motion for Summary Judgment (Docket Entry No. 33), which is presently pending. Plaintiff has filed his motion pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure seeking leave of Court to dismiss his complaint voluntarily. (Docket Entry No. 44). This motion is supported by the affidavit of plaintiff's counsel, Mr. Burger. (Docket Entry No. 46). Defendants have filed no response in opposition to plaintiff's motion.

RECOMMENDATION

In the absence of opposition by the defendants, the undersigned Magistrate Judge **RECOMMENDS** that plaintiff's Motion for Voluntary Dismissal be **GRANTED**, and that the complaint be **DISMISSED** without prejudice.

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has ten (10) days from receipt of this Report and Recommendation in which to file any written objections to this Recommendation, with the District Court. Any party opposing said objections shall have ten (10) days from receipt of any objections filed in this Report in which to file any responses to said objections. Failure to file specific objections within ten (10) days of receipt of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. Thomas v. Arn, 474 U.S. 140 (1985), reh'q denied, 474 U.S. 1111 (1986).

ENTERED this 25th day of January, 2008.

s/ John S. Bryant
JOHN S. BRYANT
United States Magistrate Judge